

REMARKS

Claims 48 and 58 are amended. Claims 59-61 are added. Claims 43-61 are in the application for consideration.

The indefiniteness rejections of claim 47, 48 and 58 are overcome by the amendments made herein.

Claims 43-50 and 55 stand rejected as being statutory double patenting under 35 U.S.C. §101 as respects U.S. Patent No. 6,486,074, and claims 43-58 stand rejected as being statutory double patenting under 35 U.S.C. §101 as respects U.S. Patent No. 6,696,224. Applicant disagrees and requests reconsideration.

As provided in the MPEP, at §804IIA, 35 U.S.C. §101 only prevents two patents from issuing on the same invention, with "same invention" meaning identical subject matter. The true test for double patenting is whether the respective claims of an application could be literally infringed without literally infringing the other corresponding claims. Here, application independent claim 43 requires that the ion implanting form innermost peak implant concentrations which are spaced elevationally outward from the layer to be etched. Independent claim 7 of the '074 patent and independent claim 11 of the '224 patent do not refer to "peak implant concentrations" (nor do the dependent claims 7-12 of '074 patent, nor claims 12-25 of the '224 patent). Therefore, claim 43 of the application requires "peak implant concentrations", whereas independent claim 7 of the '074 patent and independent claim 11 of the '224 patent do not. Accordingly, application

claim 43 could be infringed without infringing either of claim 7 of the '074 patent and claim 11 of the '224 patent.

Other distinctions are inherent between independent claim 43 and either of independent claim 7 of the '074 patent or independent claim 11 of the '224 patent. All of the limitations of the issued independent claims are not present in application claim 43. For example, each such issued independent claim requires that the blanket etching first etch through "opening bases". Opening bases are not literally recited nor required in application claim 43. Accordingly, application claim 43 could be infringed without infringing either of claim 7 of the '074 patent and claim 11 of the '224 patent.

For at least these reasons, Applicant's claims 43-50 and 55 are not §101 double patenting over the '075 patent, nor are claims 43-58 §101 double patenting over the '224 patent.

Claims 43-58 stand rejected under obviously-type double patenting as being unpatentable over certain claims in U.S. Patent No. 6,486,074 and U.S. Patent No. 6,696,224. Filed herewith is a Terminal Disclaimer with respect to the 6,486,074 and 6,696,224 patents. Accordingly, these rejections should be withdrawn.

Claims 59-61 are added. Such are supported in the application as filed at pages 6, 7 and 9. Such subject matter is not specifically claimed in either of the '074 nor '224 patents.

This application is believed to be in immediate condition for allowance, and action to that end is requested. If the Examiner's next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to issuance of any such subsequent action.

Respectfully submitted,

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